

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street, San José, California 95113-1905

Hearing Date/Agenda Number
P.C. 3/22/06 Item

File Number
CPA04-099-01

Application Type
Conditional Use Permit

Council District
6

Planning Area
Willow Glen

Assessor's Parcel Number(s)
264-53-044

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Rebekah L. Ross

Location: East side of Lincoln Avenue approximately 300 feet north of Broadway Street

Gross Acreage: 0.24

Net Acreage: 0.24

Net Density: n/a

Existing Zoning: CP - Commercial Pedestrian

Existing Use: Vacant

Proposed Zoning: No change

Proposed Use: Personal services facility (spa) with partial underground parking

GENERAL PLAN

Completed by: RLR

Land Use/Transportation Diagram Designation

General Commercial

Willow Glen Neighborhood Business District

Project Conformance:

☒ Yes ☐ No

☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: RLR

North: Commercial/Offices

CP - Commercial Pedestrian District

East: Single-Family Residences

R-1-8 - Single Family Residence District

South: Commercial/Office

CP - Commercial Pedestrian District

West: Commercial/Office/Residence

CP - Commercial Pedestrian District

ENVIRONMENTAL STATUS

Completed by: RLR

☐ Environmental Impact Report found complete

☐ Negative Declaration circulated on 6/8/00

☐ Negative Declaration adopted on

☒ Exempt

☐ Environmental Review Incomplete

FILE HISTORY

Completed by: RLR

Annexation Title: Willow Glen No. 11

Date: October 1, 1936

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval

☐ Approval with Conditions

☐ Denial

☐ Uphold Director's Decision

Date: _____

Approved by: _____

☐ Action

☐ Recommendation

APPLICANT/OWNER

Gloria Maciel
5658 Seifert Ave
San José, CA 95118

ARCHITECT

Igino Pellizzari,
Abitare Architecture
5743 Horton Street, Unit B
Emeryville, CA 94608

PUBLIC AGENCY COMMENTS RECEIVED
RLR

Completed by:

Department of Public Works

See attached memorandum

Other Departments and Agencies

See attached memoranda from Fire and San Jose Water Company

GENERAL CORRESPONDENCE

Staff Report from approved file number CP04-099

Email received from Michael Borbely

Article from Willow Glen Resident

Letter from Keith and Lynn Chase

Letter from Principal architect, Alfredo Baccari

Letter from Ron Mason

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

Abitare Architecture, on behalf of the property owner, Gloria Maciel, is requesting a Conditional Use Amendment (CPA) permit to allow changes to a previously approved Conditional Use permit, file no. CP04-099. The current Conditional Use permit allows for a three-story spa facility with underground parking. A Conditional Use permit was required to allow personal service (spa) uses in a building greater than 2,500 square feet in the Commercial Pedestrian Zoning District. A Conditional Use Amendment permit is required because the applicant has revised the plans to increase the height of the building to allow for partial below grade parking garage as opposed to the previously approved subterranean parking garage.

Location

The subject site is located on the northeast side of Lincoln Avenue, approximately 310 feet south of Coe Avenue. Commercial/office buildings reside to the north (Iron Construction, Santa Clara Appraisals, a Certified Public Accountant office and a Brookstone services). Commercial/office facilities (San Jose Aerie and Fraternal Order of the Eagles Club) abut the subject property along the southern property line. Private single-family detached residences are at the rear of the site to the east. A residence, an offices and a chiropractic office is directly across the street on Lincoln Avenue, to the west.

Prior Approval

CP04-099

The preceding Conditional Use permit (CP04-099) allowed for the construction of a three-story, thirty six (36') tall building. Personal Service/spa uses such as massage and beauty/barber services and specialty retail uses are currently allowed with the approved Conditional Use permit. Building permits could be released that would allow 8,941 gross square feet of useable interior space, 14,886 square feet of enclosed garage, 3,308 square feet of open terrace area and 568 gross square feet of mechanical equipment closets.

The approved permit includes a parking garage with subterranean parking which is no longer financially feasible to construct. Therefore the applicant has revised the plans to be able to construct a very similar project with an alternate parking solution. See attached staff report for the history and analysis of this permit.

CP99-061

Conditional Use Permit, File No. CP99-061 was approved in 2000. This permit allowed for a three-story building with below grade parking. The building was proposed to operate as a combination spa/bed and breakfast. This permit has since expired.

Project Description

The new structure will be a three-story building that will be used for retail, personal services (spa) and office (businesses) uses. Customers will enter the facility through an open courtyard area on Lincoln Avenue or access the courtyard area by descending a spiral staircase from the second level of the parking garage. Retail (product sales) and reception/lobby space will be provided at the street level. Spa guests will be referred to the second (mezzanine) level area to enjoy such services as facials, hair styling, pedicures/manicures, make-up application, jacuzzi's, body wraps and massages. Outdoor terraces are provided at the second level at the front of the site and along the northern and southern sides of the building. Employees will be provided with a private lounge area at the second level. One small business office, one small banquet room and mechanical closets are located on the third level. An outdoor eating/recreation terrace area is also provided at the third level in the middle of the site. Parking is provided within a partially below grade parking garage and two outdoor parking spaces. The parking facility includes an innovative hydraulic lift system to provide employee parking spaces (see Analysis). Cars will enter the site via a one-way driveway on the southern side of the site and will exit via a one-way driveway on the northern portion of the site.

Environmental Review

Under the provisions of Section 15332, In-Fill Development, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended in that: 1) The project is consistent with the applicable general plan policies as well as with applicable zoning designation and regulations, 2) the proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses, 3) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality and 4) the site can be adequately served by all required utilities and public services.

General Plan Conformance

This proposal is consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designation of General Commercial with a Neighborhood Business District (NBD) overlay. Main Street NBD's are intended to provide a continuous commercial street façade and uses that are complementary to each other in a pedestrian environment. This non-specialized commercial area intended to permit miscellaneous commercial uses. Below is a discussion of the applicable Policies and Goals and how the project conforms to the General Plan.

The proposal is consistent with the Urban Conservation Policies and the Community Identity Goals and Policies in that the City should encourage the development of a compact, cohesive pattern of urbanization that create a sense of community identity and that encourages new development that enhances the desirable qualities of the community and the existing neighborhoods. The proposed building will not only 'fit into' the existing area, it will stand out as an exemplary form of new development. The design is refined, detailed and tasteful. Consistent with the existing environment, the street façade has been designed to attract pedestrian traffic. It will be a building that the community can take pride in stating that it is located in their neighborhood.

The proposal is consistent with the Neighborhood Identity Goals and Policies in that private development should be designed to improve the character of the existing neighborhoods. This portion of Lincoln Avenue does not have the same level of modern development as the more established [middle] portion of the 'downtown' area. This new building will help to draw attention to the northern end of the Neighborhood Business District, and help 'tie in' this section of the 'Avenue' with the heart of the 'downtown' area.

The proposal is consistent with the Commercial Land Use Goals and Policies in that the City should encourage upgrading, beautifying and revitalization of existing commercial areas. The skillfully designed Mission-Revival building will be constructed on a vacant, under utilized site that will enhance the attractiveness of the existing neighborhood.

Public Outreach

A community meeting was held on November 8th, 2005. Residents who live within 1,000 feet of the subject site were notified of the meeting. Six people attended, including a representative from the Willow Glen Neighborhood Business and Professional Association and a reporter from the Willow Glen Resident. The immediate eastern adjacent resident and two representatives of the owner of the commercial/office building located on the northern side of the site attended. Concerns were raised about the proposed height increase, the visual impacts, the outdoor off-street parking spaces, potential shadow impacts, construction impacts, downcast lighting and loss of privacy to the residences.

Planning staff personally called the community meeting attendees to notify them of the public hearing date in addition to mailing hard copies of the notices. Staff spoke with and mailed a copy of the hearing notice to the owner of the commercial/office building that abuts the subject site to the north. The Willow Glen Resident published an article on November 16th, 2005 that reviewed the outcome of the community meeting and announced the anticipated public hearing time frame (attached). Two letters of support have been received (attached).

Notices of the public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the subject site. The Planning Commission Agenda is posted on the City of San José website, which includes a copy of the staff report. Staff has been available to discuss the project with interested members of the public.

ANALYSIS

The primary issues for this project are conformance with the Zoning Code, the Commercial Design Guidelines, the Downtown Willow Glen Design Policy and compatibility with surrounding uses.

Conformance with the Zoning Code

Development Standards

New development in the Commercial Pedestrian zoning district is allowed to build to the property lines (zero side setbacks), have a maximum ten-foot front setback and a twenty-five foot rear setback. The proposed project precisely conforms to these development standards.

Height

A maximum height of fifty feet (50') and/or four stories is permitted. The proposed building is three stories and is, at the topmost pitch, 42'. This is only a seven foot difference between the previously approved project. This peak is setback approximately 48' feet from the rear building wall and 73' from the rear eastern property line, 118' feet from the front property line, 35' from the northern property and southern property lined'. At the rear and front, the building measures to 31' and is two stories tall.

The third story is setback 40' from the rear wall of the building and 65' from the rear adjacent property line with abuts the eastern residential property line. This portion of the project measures 38'. At the front of the site, the third story element has been set back eight and a half feet from the property line.

Parking

"Personal Service" facilities are required to have one parking space for every 200 square feet of net floor area. With 7,599 proposed net floor area, 38 parking spaces are required. A ten percent parking reduction is allowed within the Neighborhood Business Districts; therefore the requirement can be reduced by four spaces. Where 34 parking spaces are required, 38 parking spaces are provided.

The parking facility will be approximately six and a half feet below grade. Customers will access the parking garage via a ramp entrance located on the southeast corner of the site. The ramp leads up to the mezzanine level or down to the lower level of parking. Eighteen (18) public parking spaces and eight (8) hydraulic lift "employee only" parking spaces are provided within the lower level. Twelve (12) public parking spaces are provided the second (mezzanine) level.

Furthermore, the property owner proposes to share parking with the adjacent uses, such as the Eagles Club located to the south. The site currently has a minimal amount of excess parking, but the garage could be used for off-street parking for adjacent uses when the spa is not in operation.

Massage

Title 20 of the San Jose Municipal Code allows massage uses in conjunction with a beauty salon provided that the massage use does not constitute more than 15 percent of the total floor area. The gross floor area is 7,775 square feet. No more than 1,166 square feet of floor space shall be allowed to be used for massage purposes.

Commercial Design Guidelines

In the "Main Street" area of the Lincoln Avenue Neighborhood Business District, buildings are built to or near the front property line to create a pedestrian-oriented environment from the sidewalk. This proposal continues that pattern in conformance with recommendations of the Commercial Design Guidelines. The proposed spa is designed with minimal setbacks on the sides and front, with the

majority of parking located below grade. An arched pedestrian entryway leads into an open gallery/courtyard area that includes a fountain. The fountain can be viewed from the street, which enhances the pedestrian presence along Lincoln Avenue.

The upper open terraces with wrought iron railings located above the entry feature provide additional visual presence and articulation along the street frontage. Decorative wrought iron gates and downcast wall lights define the garage entry and egress.

The finished materials include Santa Barbara Mission colored painted stucco walls, textured block walls along the northern property line, a detailed parapet line, red clay Spanish roof tiles, decorative wrought iron balconies and wide windows.

Downtown Willow Glen Design Policy Conformance

The Downtown Willow Glen Design Policy serves as a guideline to preserve and enhance the visual character and image of the Lincoln Avenue Business District. The business district is divided into two design areas. The proposed project is located in Design Area II, which includes both residential and commercial buildings. This area is in transition to commercial uses.

According to the Policy, new construction in Design Area II should respect the scale and rhythm of surrounding businesses, and provide parking away from the main street. New architecture should be compatible with existing buildings in Design Area I, and should incorporate design features that include sidewalk-oriented entrances, and street level commercial activities. New buildings should abut existing adjacent buildings to the sides.

As described above, the arched entryway and open gallery/courtyard area is oriented toward the sidewalk. All the parking spaces are provided off-street. The building extends to the side property lines. The size of the proposed spa is greater than the adjacent buildings, but is visually scaled down with the use of carefully designed setbacks and design features. The proportional setbacks at the street, second and third levels alleviate the perceived massing of the building. The architectural detailing and building materials create a residential “feel” to the commercial building and provides a structure that is compatible with other commercial buildings along Lincoln Avenue, as well as with adjacent residential uses.

Compatibility with Surrounding Uses

Three single-family residential properties abut the subject site at the eastern (rear) property line. A seven-foot tall, six inch wide masonry wall with stucco finish will be constructed along this interface. Seven, ten foot tall, 24-inch box “Cajeput” trees will be planted every ten feet along this perimeter to provide screening and privacy to the rear yards of these properties. Additional screening will be provided by existing accessory structures on the abutting lots.

The wall along the northern edge of the property line will be constructed from the ‘inside out’ by using a block wall technique. The developer will be prohibited from using the northern adjacent parking during construction.

Conclusion

Based on the above analysis, staff concludes that the proposed facility is in conformance with all

applicable policies and guidelines, and is compatible with surrounding uses.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding the proposed project:

1. This site has a designation of General Commercial with Neighborhood Business District Overlay on the adopted San Jose 2020 General Plan Land Use/ Transportation Diagram.
2. The project site is located in the CP Commercial Pedestrian Zoning District.
3. The site was annexed into the city in 1936.
4. A Conditional Use Permit (File No. CP99-061) was approved on this site on July 12, 2000. This CUP allowed for a three-story building with below grade parking. The building was proposed to operate as a combination spa/bed and breakfast. This CUP has since expired.
5. Under the provisions of Section 15332 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.
 - a. The proposed project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code.
6. The 0.26-acre site is presently vacant.
7. The site is surrounded by single-family detached residential use to the east and office/commercial uses to the north, south and west.
8. A personal service use in the CP Commercial Pedestrian Zoning District of greater than 2,500 square feet requires approval of a Conditional Use Permit.
9. The applicant is proposing a spa/salon facility with 8,941 gross square feet of enclosed commercial/retail area total on the 1st, 2nd and 3rd floors.
10. Title 20 of the San Jose Municipal Code allows massage uses in conjunction with a beauty salon so long as the massage use does not constitute more than 15 percent of the total area. The proposed massage rooms comprise less than 15 percent of the total spa area.
11. The proposed project includes 38 parking spaces, which exceeds the Zoning Code requirement of one space per 200 square feet for the spa/beauty salon. The total required parking for this project based on a net usable floor area of 7,599 square feet and a 10% parking reduction for the business district, is 34 parking spaces.
12. A masonry wall and dense vertical landscaping are provided to screen adjacent existing residential

properties.

13. In the “Main Street” area of the Lincoln Avenue Neighborhood Business District (NBD), buildings are built to or near the front property line to create a pedestrian oriented environment. This proposal continues that pattern in conformance with recommendations of the Commercial Design Guidelines. A 6-foot, 6-inch masonry wall with perimeter trees serves as a further buffer between the commercial and existing residential uses in conformance with the Guidelines.
14. The Downtown Willow Glen Design Policy serves as a guideline to preserve and enhance the visual character and image of the Lincoln Avenue Business District, dividing the District into two design areas. The proposed project is located in Design Area II, which includes both residential and commercial buildings. This area is in transition to commercial uses. According to the Policy, new construction in Design Area II should respect the scale and rhythm of surrounding businesses, and provide parking away from the main street. The mass of the proposed/spa is larger than that of either adjacent building; however, setbacks at the street and second levels reduce the apparent mass of the building and architectural detailing and building materials provide a structure that is compatible with other commercial buildings along Lincoln Avenue, and parking is located primarily below-grade,

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project, as conditioned, will be consistent with the adopted San Jose 2020 General Plan Land Use/ Transportation Diagram of the City of San Jose of General Commercial.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed use is compatible with the surrounding neighborhood, and in conformance with the Commercial Design Guidelines and the Downtown Willow Glen Design Policy.

Finally, based upon the above stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility of value of property of other persons residing or working in the surrounding area; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the rear yard uses as proposed, parking and loading facilities and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highway or streets of sufficient width and improved as necessary to carry the kind and quality

of traffic such use would generate and; and

- b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Effective Permit.** This Conditional Use Permit Amendment is precedent over previously approved permit file number CP04-099.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "La Concha Spa" dated April 4, 2005, last revised 02/02/06, on file with the Department Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 24).

3. **Effective Permit.** This Conditional Use Permit Amendment is precedent over previously approved permit file number CP04-099.
4. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Construction Activity.** The applicant shall contain all construction activities within the legal property lines of the subject site or shall obtain a construction easement agreement with the appropriate adjacent property owners.
5. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific construction noise mitigation plan and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses. The construction schedule and the name and phone number of a contact person for construction complaints shall be provided to property owners and residents adjacent to the project site and to the Director of Planning at least two weeks prior to commencement of grading.
6. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
7. **Garage Gate.** The garage entrance gate shall remain open during the hours when the spa is open for business.
8. **Allowed Uses.** Implementation of other uses allowed by right in the CP Commercial Pedestrian District in conjunction with the proposed spa use shall require an Amendment or Adjustment to this Permit as determined necessary by the Director of Planning. Additional parking shall be required prior to conversion of hotel rooms to another use.
9. **Outdoor Activities.** Outdoor activities on the second level terraces shall be limited to the hours of 8:00 a.m. to 8:00 p.m. Monday through Friday, and 10:00 a.m. to 8:00 p.m. Saturday, Sunday and holidays. Outdoor groups/parties shall not be allowed in these areas.
10. **Noise Limits.** Noise generated by the proposed use shall not exceed 55 dB DNL at any property line adjacent to a property used for residential purposes or 60 dB DNL at a property line adjacent to a property used for non-residential purposes.
11. **Amplified Sound.** The permit does not permit nor include any approval for exterior/outdoor amplified sound.
12. **Off-Street Parking.** The site may be used as an off-street parking facility during times at which the spa facility is closed. Use of the parking shall not extend past 12:00 am (midnight) and shall only include enclosed parking area. The user of the off-street parking shall provide monitoring of the site during periods that they make use of the parking facility.

13. **Employee Parking.** Only employees shall use the interior hydrolic lift parking system. Public parking will be allowed in the spaces beneath the hydrolic lift.
14. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
15. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
16. **Lighting.** On-site lighting shall be full cut-off low-pressure sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property.
17. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
18. **Outside Storage.** No outside storage is permitted.
19. **Sign Design.** No signs are approved at this time. Approval of any sign will be required through a Sign Permit Adjustment.
20. **Colors and Materials.** All building colors and materials are to be as specified on the approved plan set.
21. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the requirements of previously released memo file no. 3-13382 to the satisfaction of the Director of Public Works:
 - a. **Storm Drainage, Sewer Fees.** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable
 - b. **Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - ii. A soils report addressing the potential hazard of liquefaction must be submitted to and accepted by the City Engineering Geologist prior to the issuance of a Public Works Clearance or a grading permit.
 - c. **Transportation:** The projected traffic for this project was reviewed and found to be minimal, therefore no further traffic analysis is required.

d. ***Street Improvements:***

- i. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
- ii. Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
- iii. Close unused driveway cut(s).
- iv. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement restoration will be included as part of the final street improvement plans.

e. ***Landscape:***

- i. Install street trees within the public right-of-way along the entire street frontage per City standards.
- ii. The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.
- iii. Contact the City Arborist at (408) 277-2756 for the designated street tree.
- iv. Remove existing street tree. This is in conflict with proposed driveway.

18. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:

- a. ***Construction Plans.*** This permit file number, CP04-099-01, shall be printed on all construction plans submitted to the Building Division.
- b. ***Emergency Address Card.*** The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
- b. ***Americans With Disabilities Act.*** The applicant shall provide appropriate access as required by the Americans With Disabilities Act (ADA).
- c. ***Mechanical Equipment.*** No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise level from such equipment will not exceed 55 DBA at the residential property line.

11. **Fire Clearance for Issuing Permits.** Prior to the issuance of Building Permits, the applicant shall meet all requirements of the Fire Department to the satisfaction of the Fire Chief.

12. **Emergency Access Easement.** Prior to the issuance of Building Permits, the applicant shall obtain an emergency access easement shall be recorded on the adjacent property with all necessary subordinations to the satisfaction of the Director of Planning.

13. **Electrical Gates.** Electrical gates shall be provided to the parking lot with manual means of opening subject to the approval of the Fire Department. The developer and/or property owner shall install a system at the project gate that permits emergency service access onto the site by City of San José Police

and Fire Department personnel.

14. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
15. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
16. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
17. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

cc: Building Division (2)

Engineering Services

Gloria Maciel, 5658 Seifert Ave., San Jose, CA 95118

Igino Pellizzari, Abitare Architecture, 5743 Horton St, Unit B, Emeryville, CA 94608